IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-12-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.28758 of 2007

and

MP No.2 of 2007

1.Kurshed Sharfudeen
2.S.Hafez Khadar Ibrahim .. Petitioners

vs

1.IBP Company Ltd
having its Regional Office at
No.10, Mayor Ramanathan Road
Chetpet, Chennai 31.

2.The Divisional Manager
IBP Company Ltd.,
Madurai Divisional Office
Plot Nos.3 & 4, Ponmeni By-pass
Road, Madurai 625 016.

3.The Indian Oil Corporation Ltd.,
Rep. By its Divisional Manager
Ponmeni N.H. 7, By-pass Road
Madurai 625 016. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the 3rd respondent herein relating to his proceedings made under Ref.No.CH4/9 COCO at S.No.152/4B, Pudukkottai North Panchayat, Alangudi Road, Pudukottai, dated 11.7.2007 and quash the same, and consequently direct the third respondent to allot the retail outlet dealership in respect of Alangudi Road, Pudukottai District, to the petitioners herein.

For Petitioners : Mr.M.Palani

For Respondents : Mr.R.Ravi for RR1 & 2
Mr.Anand
for M/s.Anand, Abdul and
Vinod Associates
for R3

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ORDER

Challenge is made to an order of the third respondent passed on 11.7.2007, in Ref.No.CH4/9 COCO at S.No.152/4B, Pudukkottai North Panchayat, Alangudi Road, Pudukottai. The petitioners have brought forth this petition seeking a writ of certiorarified mandamus.

2.The affidavit in support of the petition along with the grounds are perused. The Court heard the learned Counsel on either side,and the materials are also scrutinised.

3.As could be seen from the available materials and the submissions made by the learned Counsel for the petitioners, a license to run a petrol outlet at Alangudi Road, Pudukottai, was granted to one Sumathi for a period of one year from 2002 to 2003, and it was renewed, and since she was sick, she could not further continue the same, and she had got a proposal to sell the same. According to the petitioners, they purchased the said piece of land for a heavy price, and they applied for the interview which was done by the second respondent Corporation, pursuant to which a contract was entered into between them originally for one year namely 2004-2005, and subsequently, it was renewed for 2005-2006 and also for a period of six months. While the matter stood thus, the impugned order was served upon the petitioners stating that the contract was terminated, and the notice for that purpose will have its effect from 11.7.2007, and hence, necessary proceedings have got to be followed, and the contract stood terminated from 10.8.2007. Aggrieved over the same, the petitioners have brought forth this writ petition before this Court.

4.The learned Counsel for the petitioners with vigour and vehemence would submit that in the instant case, it is not in controversy that originally, lease was granted in favour of one Sumathi for a period of one year; that since she could not continue due to her sickness, the petitioners were permitted to run the petrol outlet pursuant to an interview, and it has been subsequently renewed; that the renewal documents if looked into, would clearly indicate that it was not a license, but permission; that permission and license cannot go together; that apart from this, the permission originally what was granted and subsequently renewed, for no reasons or fault on the part of the petitioners, was suddenly terminated; that needless to say that the undertaking of the third respondent Corporation is being done by the State, and thus, it has got mighty bargain; that by exercise of that mighty bargain arbitrarily and without any reason whatsoever, it has terminated the contract in question, which it should not have done; that apart from that, in the instant case, the petitioners have purchased the property for a sum of Rs.22 lakhs from Sumathi, who was the original owner, and have also been running the petrol outlet; and that this purchase was made and a rest room at a cost of Rs.3 lakhs was also constructed only on the assurance given by the respondents that it would be renewed continuously; but, to their shock and surprise, it has been terminated without any reason whatsoever.

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5.The learned Counsel relied on the decisions of the Apex Court to say that even in the case of fault, the Government cannot act arbitrarily and terminate the contract to the disadvantage of the person in whose favour the contract was given; that in the instant case, no fault of the petitioners is noticed; that the third respondent has suddenly addressed a communication which is under challenge; that nowhere it speaks about any mistake or reason or fault on the part of the petitioners, and under the circumstances, the Court has to come to the rescue by issuing a writ as one asked for in this case.

6.The learned Counsel relied on Clause "r" of the contract, which reads that the M & H Contractor will inform the Company at least 30 days in advance of the expiry date of the Licenses, permissions, etc. of the retail outlet to enable the Company to renew the same. The learned Counsel would further add that the petitioners have purchased the land for a heavy price and made improvements on the assurance given by the respondents, and thus, it amounts to legitimate expectation.

7.Contrary to the above contentions, the learned Counsel for the respondents 1 and 2 relying upon the contract entered into between the parties, would submit that as per Clause 48, the agreement is only for a period of one year having effect from 31.3.2006 to 30.3.2007 subject to the renewal by the year 2007 at the Company's option at the same rates and on the same terms and conditions as contained in that agreement, and without prejudice to the same, the agreement could be terminated at the option of either party by giving at least one month's notice in writing to the other party without assigning any reason whatsoever; that after the license period as found in the agreement, was over on 30.3.2007, the impugned order has been passed terminating the contract given to the petitioners; that even that Clause would be binding on both the parties; that in addition to that, 30 days' notice has got to be given for termination, and further, no reasons are necessary to be assigned; that under the circumstances, without assigning any reason, the termination has been made, and under the circumstances, the contention put forth by the learned Counsel for the petitioners cannot be countenanced.

8.Added further the learned Counsel that it was only a license; that there was no occasion for the Company to come forward to give any assurance; that the petitioner could have purchased the land in order to continue the outlet ever long; that even the contract entered into between the parties, would clearly reveal that if there is any dispute between the parties, either of the party must go before arbitration and not before the Court of law; and that under the circumstances, even assuming that the petitioners are aggrieved by the termination order, they should have gone for arbitration.

9.The learned Counsel relied on a decision of the First Bench of this Court in W.A.No.737 of 2007 dated 7.6.2007, and would further add that in the instant case, once the license period is

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over, they are entitled to terminate the contract; that even as per the agreement, it was understood between the parties; that accordingly, it has been done, and hence, the writ petition has got to be dismissed.

10.The Court paid its anxious consideration on the submissions made and also looked into the materials available.

11.This Court is afraid whether it could agree with the case of the petitioners herein. It is not in controversy that the land on which the outlet is being run, originally belonged to one Sumathi, and she was actually running the outlet pursuant to a license issued in her favour. A very reading of the affidavit would make it clear that it was only a license and not a lease. Admittedly, it was given to the petitioners for a period of one year. It was renewed subsequently and came to an end on 30.3.2007. Thus, it is clear that there was a renewal. The learned Counsel for the petitioners relied upon the word "renewal" used on the earlier occasion when the contract was renewed. Nowhere in the entire contract entered into between the parties at the earliest or the present one entered into between the parties or the latest renewal, the word "lease" is found; but, it was found either the license or the permission. Needless to say that the concept of license and lease are entirely different. As could be seen, the petitioners cannot travel beyond the Clauses what are found in the agreement entered into between the parties. Even Clause "r" relied on by the petitioners, would also reveal that it was only a license since it says that M & H Contractor will inform the Company at least 30 days in advance of the expiry date of the licenses, permissions, etc. of the retail outlet to enable the Company to renew the same. The contention put forth by the learned Counsel for the petitioners that the word "permission" is used and therefore, the case of the petitioners has got to be accepted cannot be countenanced in law since it was not a lease, but only a license or permission. It would be more apt and appropriate to reproduce Clause 48 as follows:

> "48.The agreement will be for a period of ONE YEAR effective from 31.03.2006 TO 30.03.2007 subject to the renewal by the year 2007 at the Company's option at the same rates, and on the same terms and conditions as are herein contained. Without prejudice to the aforesaid, this Agreement may be terminated at the option of either party by giving at least one month's notice in writing to the other party, without assigning any reason whatsoever. In case of breach of contract, the Company reserves the right to terminate this Agreement forthwith. Unless otherwise mentioned or renewed in writing this Agreement stands automatically terminated at the end of the agreement period. If any information given by the M & H Contractor in his application for appointment shall be found to be untrue or incorrect, in material respect, the Company reserves the right to terminate this Contract forthwith."

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12.The above Clause would clearly reveal that whenever the period of one year is over, it could be terminated, and one month's notice is sufficient and no reasons to be assigned therefor. Under the circumstances, such a notice has been issued validly terminating the contract.

13.As regards the contention put forth by the learned Counsel for the petitioners that they have purchased the property from the erstwhile owner for a fabulous price and also made developments only on the assurance made by the Company, no material is available to indicate the same; but, only the mere assertions are made by the petitioners which are found in the affidavit, and the same cannot, but be to their advantage only. Merely because it was purchased for such a price and improvements have also been made, the petitioners cannot compel the respondents Company that the contract has got to be renewed.

14.Apart from the above, the contention put forth by the learned Counsel for the petitioners that it is a legitimate expectation cannot be accepted by the Court even for a moment. It was only the fond hope of the petitioners without any vested right, and therefore, it cannot be stated to be a legitimate expectation in law. The mere fond hope or desire of a person to obtain a thing may not amount to legitimate expectation. To call it as a legitimate expectation, the expectation must be legitimate. In the instant case, it is not so. Under the circumstances, all the contentions put forth by the learned Counsel for the petitioners do not carry any merit whatsoever. Accordingly, this writ petition fails and the same is dismissed. No costs. Consequently, connected MP is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

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To:

1.IBP Company Ltd
having its Regional Office at
No.10, Mayor Ramanathan Road
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2.The Divisional Manager
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3.The Indian Oil Corporation Ltd.,
Rep. By its Divisional Manager
Ponmeni N.H. 7, By-pass Road
Madurai 625 016.

1 cc to Mr.M. Palani, Advocate, Sr. 75043
1 cc to M/s. Anand and Abdul and Vinodh, Advocate, Sr. 75668

WP No.28758 of 2007

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